

STATE OF MICHIGAN
COURT OF APPEALS

MAURICE JANOWITZ,

Plaintiff-Appellant,

v

TOWNSHIP OF WEST BLOOMFIELD,

Defendant-Appellee.

UNPUBLISHED

January 29, 2002

No. 226166

Tax Tribunal

LC No. 00-265749

Before: Sawyer, P.J., and O’Connell and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an opinion and judgment entered by the Small Claims Division of the Tax Tribunal that upheld defendant’s 1999 assessment of plaintiff’s real property. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The dispute in this case centers on the taxable value of plaintiff’s residence. Construction of the home began in 1993 and according to plaintiff was completed sometime in 1997. Defendant first inspected the home’s interior in 1998. For the tax year 1998, defendant originally set the taxable value at \$461,300. Plaintiff disputed that figure and it was later reduced to \$430,000 by stipulation of the parties. For the tax year 1999, defendant set the property’s taxable value at \$466,500. Plaintiff challenged the \$36,500 increase between 1998 and 1999 on the ground that it exceeded the inflation rate. Defendant’s position was that the 1999 taxable value reflected certain additions to the property, specifically, the completion of the home’s lower level or basement, including two bathrooms, and the installation of exterior stone. Plaintiff maintained that those improvements were included in the stipulated 1998 taxable value and therefore were not additions.

Under MCL 211.27a(2)(a), taxable value may only be increased by five percent of the previous year’s taxable value or the inflation rate, plus “all additions.” As relevant to this case, MCL 211.34d(b)(i) states that the definition of “additions” includes “omitted real property,” meaning

previously existing tangible real property not included in the assessment. Omitted real property shall not increase taxable value as an addition unless the assessing jurisdiction has a property record card or other documentation showing that the omitted real property was not previously included in the assessment. The assessing jurisdiction has the burden of proof in establishing whether the omitted property is included in the assessment. . . .

The hearing referee found that the completed basement, including the two bathrooms, and the exterior stone were in existence on December 31, 1997, but that defendant did not value those items for purposes of the 1998 tax year. Concluding that defendant was authorized to consider the items as additions to taxable value for purposes of the 1999 tax year, the referee upheld the 1999 taxable value of \$466,500. On appeal, plaintiff argues that this ruling was in error because defendant did not meet its burden of showing that the claimed omitted property had not been included in the stipulated 1998 taxable value of the property. This Court's authority to review a decision of the Tax Tribunal is very limited. *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). In the absence of an allegation of fraud, review is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle. *Id.* The tribunal's factual findings will not be disturbed as long as they are supported by competent, material, and substantial evidence on the whole record. *Id.* at 490-491.

The tribunal's finding in this case, that the completion of the basement was not included in the 1998 taxable value and hence was "omitted real property" for purposes of the 1999 taxable value, is supported by competent evidence. The 1998 property valuation record shows that defendant considered the value of the basement to be under \$1,000 and the cost of the home's bathrooms was shown as \$6,000 less than the following year. There is nothing in the record suggesting, as plaintiff argues, that defendant intended the 1998 stipulation to take into account a finished basement; in fact, the certified statement of facts indicates the inspector testified he considered the basement and its bathrooms unfinished when he inspected the house in January 1998. Given the limited scope of this Court's review, we must uphold the tribunal's finding on this issue.

Plaintiff argues that, even if the tribunal was correct in finding that the 1998 taxable value did not include the finished basement, the evidence did not warrant increasing the 1999 taxable value by over \$36,000. Specifically, plaintiff contends that the tribunal should have used a 1998 market analysis that deducted \$20,000 from the estimated value of the residence for lack of a finished basement to fashion a revised 1999 taxable value. However, as noted by the tribunal, the market analysis was not reliable for that purpose since there was no evidence correlating its assumptions to the features of the house in its completed state. The burden was on plaintiff to establish the true cash value of his property. MCL 205.737(3). In light of the absence of competent evidence that defendant's valuation of the improvements was not representative of their market value, we decline to disturb the tribunal's findings regarding the 1999 taxable value.

Finally, plaintiff contends that collateral estoppel barred defendant from increasing the 1999 taxable value beyond the inflationary factor. This argument is premised on the assumption that the stipulated 1998 taxable value included the value of the finished basement and stonework. However, the tribunal determined that the stipulated 1998 taxable value did not include those improvements. Consequently, the inclusion of those items in the 1999 taxable value did not amount to a relitigation of a settled matter as plaintiff claims.

Affirmed.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Brian K. Zahra